



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 230206-0037]

RIN 0648-BL38

Flower Garden Banks National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing this final rule to remove a provision from one section of the existing Flower Garden Banks National Marine Sanctuary (FGBNMS) regulations, regarding the resolution of conflicting Federal agency regulations by the Director of the Office of National Marine Sanctuaries.

DATES: This final rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: George P. Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, Texas 77551, at 409-356-0383, or george.schmahl@noaa.gov.

FOR FURTHER INFORMATION CONTACT: George P. Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, Texas 77551, at 409-356-0383, or george.schmahl@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Flower Garden Banks National Marine Sanctuary

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce (Secretary) to designate and protect, as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. Day-to-day management of national marine sanctuaries is delegated by the Secretary to NOAA's ONMS. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of FGBNMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

FGBNMS is located in the northwestern Gulf of Mexico approximately 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana. These offshore areas encompass a wide range of geologic features and habitat conditions that support several distinct biological communities, including the northernmost stony coral reefs in the continental United States. The banks, reefs, and similar formations provide the foundation for essential benthic habitats that support a wide variety of species. They are home to the most significant examples of coral and algal reefs, mesophotic and deepwater coral communities, and other biological assemblages in the Gulf of Mexico. The combination of location and geology makes FGBNMS extremely productive and diverse, and presents a unique set of challenges for managing and protecting its natural wonders.

When NOAA first designated FGBNMS on December 5, 1991 (56 FR 63634) and Congress subsequently passed a law recognizing the designation on January 17, 1992 (Pub. L. 102-251, Title I, Sec. 101), the sanctuary consisted of only two areas known as East and West Flower Garden Banks (56 FR 63634). Among other things, FGBNMS

regulated a narrow range of activities, established permit and certification procedures, and exempted certain U.S. Department of Defense (DOD) activities from the sanctuary's prohibitions (56 FR 63634). The regulations also exempted activities necessary to respond to emergencies threatening life, property, or the environment (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664). In 1996, Congress added Stetson Bank to the sanctuary (Pub. L. 104-283). The boundaries of Stetson Bank and West Flower Garden Bank were later amended to improve administrative efficiencies and increase the precision of all boundary coordinates based on new positioning technology (65 FR 81175, Dec. 22, 2000). Subsequently, on January 19, 2021, NOAA issued a final rule for the expansion of FGBNMS (86 FR 4953). The final rule went into effect on March 22, 2021 (86 FR 15404), and expanded the boundaries of FGBNMS from approximately 56 square miles to approximately 160 square miles (145 square kilometers to 414 square kilometers), and increased the number of protected reefs and banks (86 FR 4953). FGBNMS now protects East and West Flower Garden Banks, Stetson Bank, Horseshoe Bank, MacNeil Bank, Rankin/28 Fathom Banks, Bright Bank, Geyer Bank, Elvers Bank, McGrail Bank, Bouma Bank, Sonnier Bank, Rezak Bank, Sidner Bank, Parker Bank, and Aldrice Bank.

The areas designated as FGBNMS are currently managed by several Federal agencies that share jurisdiction over the area and its resources. These agencies include: the U.S. Department of the Interior, Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement, who share primary jurisdiction over offshore energy exploration and development; the U.S. Environmental Protection Agency, which is responsible for protecting the quality of the nation's waters; NOAA's National Marine Fisheries Service and Gulf of Mexico Fishery Management Council, which jointly manage the U.S. fisheries; and, as previously stated above, NOAA's ONMS, which provides comprehensive management and protection to the sanctuary. Additionally, DoD

and U.S. Coast Guard activities, as well as commercial shipping and other marine activities, occur in and around the waters of FGBNMS.

B. Summary of this Final Rule's Revision

This action responds to the issues raised by Federal agency partners during interagency review of the final rule to expand FGBNMS (86 FR 4953), and during interagency review of a separate, unrelated interim final rule to update and reorganize the existing sanctuary regulations and eliminate redundancies (87 FR 29606). Specifically, the Federal agency partners expressed concern that the sanctuary regulation at 15 CFR 922.122(b) does not reflect existing practice and may be an overreach of the ONMS Director's delegated authority under the NMSA. Specifically, section 922.122(b) provides that if a Federal agency regulation and a Sanctuary regulation conflict, then the regulation deemed by the Director of the ONMS as being more protective of sanctuary resources and qualities shall govern. The NMSA does not contain express language that prescribes how potential conflicts with other Federal regulations are to be resolved. The NMSA instead establishes a framework "to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities" (16 U.S.C. 1431(b)(6)). The NMSA also "provide[s] authority for comprehensive and coordinated conservation and management of . . . marine areas, and activities affecting them, in a manner which complements existing regulatory authorities" (16 U.S.C. 1431(b)(2)). To ensure sanctuary regulations facilitate compatible use and complement existing regulatory authorities, the NMSA directs NOAA to consult with other Federal agencies on the proposed designation of new sites or expansion of existing sites (16 U.S.C. 1433(b)(2), 1434(a)(4)). It is through this consultation process, which occurs before the designation or expansion of sanctuaries, that potential conflicts among Federal agency regulations are typically resolved or avoided. NOAA is unaware of any situation in which 15 CFR

922.122(b) has ever been triggered, and section 922.122(b) does not reflect NOAA's preferred approach to resolve potential interagency regulatory conflicts. Therefore, to address the concerns raised by Federal partners, NOAA finalizes the proposal to remove the existing language from 15 CFR 922.122(b) to reflect existing practice and better track the NMSA. The remaining paragraphs of 15 CFR 922.122 will remain unchanged.

A provision similar to 15 CFR 922.122(b) also appears in Article V of the terms of designation codified in appendix B of 15 CFR part 922, subpart L. This action does not modify that provision. Pursuant to section 304(a)(4) of the NMSA, the terms of designation may only be modified by the same procedures by which the designation is made. The process includes scoping, proposal, consultation with Federal agency partners and public review, as well as review by Congress. Because additional procedures are required to alter the terms of designation, NOAA is using regulatory action as the first step in the process.

II. Public Comments Received

NOAA received one comment in response to the proposed rule, and it is posted and publicly available on regulations.gov, under docket number NOAA-NOS-2022-0047. The comment is summarized and NOAA provides a response to the comment below.

Comment: The commenter asks if the rule evaluated any insurance, capacity, or regulatory impacts on small businesses, or if environmental and marine protections have been considered in the promulgation of the rule. The commenter also asks if competitive labor interests or equitable contract leverage will be available, or if construction would cause environmental disturbance.

Response: No, the rule does not evaluate the insurance, capacity, or regulatory impacts on small businesses, nor does it consider the competitive labor interests. NOAA believes this comment is out of scope for this rulemaking. This final rule is strictly administrative in nature, and does not create any new requirements for small businesses

nor does it create or remove any environmental protections. This final rule is a technical solution for a regulatory provision for FGBNMS that did not accurately describe how potential conflicts between the sanctuary regulations and other Federal regulations are to be resolved. The existing regulations establish that if a Federal agency regulation and a FGBNMS regulation conflict, then the regulation deemed as being more protective of sanctuary resources and qualities by the Director of ONMS shall govern. In actual practice, NOAA consults with other agencies on regulations that conflict with sanctuary regulations, so as to facilitate uses of sanctuary resources that are compatible with resource protection. Therefore, NOAA is finalizing the proposal without change so that existing practices are better reflected.

III. Classification

A. National Environmental Policy Act

NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (NOAA Administrative Order (NAO) 216-6A and Companion Manual for NAO 216-6A) provide that all NOAA major Federal actions be reviewed with respect to environmental consequences on the human environment. Based on the NAO and Companion Manual, NOAA examined the proposed rule for its potential to impact the quality of the human environment and concluded that it is categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement in accordance with the NOAA Categorical Exclusion G7 because, this action is a notice of an administrative and legal nature, any future effects of subsequent actions are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject to later NEPA analysis, and there are no extraordinary circumstances precluding the application of this categorical exclusion. NOAA received no public comments related to effects on the human environment. As such, this final rule has been determined to be categorically excluded under G7 as

described in the Companion Manual for NAO 216-6A, Appendix, page E-14, and which applies to preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis.

B. Executive Order 12866: Regulatory Impact

This final rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, but NOAA did receive one public comment about the evaluation of the insurance, capacity, or regulatory impacts on small businesses. However, NOAA has determined that said public comment is outside the scope of this rulemaking given the fact that this final rule is strictly administrative in nature, the amendment addresses how potential conflict among other Federal agency regulations and FGBNMS sanctuary regulations are to be resolved, and the final rule does not create any new requirements for small businesses nor does it create or remove any environmental protections. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 15 CFR part 922

Administrative practice and procedure, Marine resources, Natural resources.

Nicole R. LeBoeuf,

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National Ocean Service,

National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, NOAA amends part 922, title 15 of the Code of Federal Regulations as follows:

PART 922 - NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

Subpart L - Flower Garden Banks National Marine Sanctuary

§922.122—[Amended]

2. Amend §922.122 by removing and reserving paragraph (b).